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No. 94-578

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

DISTRICT OF COLUMBIA, *et al.*,
Petitioners,
v.
BRENDA LAMPKIN, AS LEGAL GUARDIAN OF JESSICA LAMPKIN AND CHRISTINE LAMPKIN, MINORS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether homeless children can seek relief under 42 U.S.C. § 1983 (1988) for the deprivation of educational rights guaranteed them by the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. § 11301 *et seq.* (1988 & Supp. IV 1992).

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

STATEMENT

A. The McKinney Act

In 1987, Congress enacted the McKinney Homeless Assistance Act in response to "the critically urgent needs of the homeless," 42 U.S.C. § 11301(b)(2) (1988), including the proper education of their children. 42 U.S.C. §§ 11431-35 (Supp. IV 1992). The goal of Title VII of the McKinney Act is to assure that "each child of a homeless individual and each homeless youth have access to a free, appropriate public education," that states review and revise "laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and homeless youth," and that "homelessness alone . . . not be sufficient reason to separate students from the mainstream school environ-

ment." *Id.* § 11431. To achieve that goal, Congress empowered the Secretary of Education to grant funds to states participating in the programs authorized by the Act. *Id.* § 11432(a).[1] States receiving funds under the McKinney Act must comply with its several requirements.

The McKinney Act directs that "[g]rants . . . shall be used . . . to carry out the policies set forth in section 11431 of this title in the State," "to establish or designate an Office of Coordinator of Education of Homeless Children and Youth," and "to prepare and carry out the State plan described in subsection (e) of this section." *Id.* § 11432(c)(1), (3), (4). Subsection (d) outlines the duties of the Coordinator, which include the duty to "develop and carry out the State plan" and to "facilitate coordination" between state educators and other social service providers in serving homeless children and their families. *Id.* § 11432(d)(2) & (4). Each state plan must contain provisions designed, *inter alia*, to "develop programs for school personnel" and to "heighten the awareness . . . of the specific educational needs of . . . homeless youths." *Id.* § 11432(e)(1)(C) Each state also must address problems regarding educating homeless children and youths, including problems caused by transportation difficulties, immunization and residency requirements, lack of birth certificates and other school records, or guardianship issues. *Id.*, § 11432(e)(1)(G)(i)-(ii).

In addition, the McKinney Act specifically directs local education agencies to enroll homeless children in the school that is in their best interest to attend; to provide transportation services comparable to those provided to other students; to maintain school records so they are available for transfer in a timely fashion; to coordinate with other social service agencies; to designate a homelessness liaison; and to review and revise policies that act

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[1] The District of Columbia is deemed a state for purposes of the Act. 42 U.S.C. § 11421(d); Pet. App. 4a.

as barriers to the continued education of homeless children. *Id.* § 11432(e)(3)-(a).

B. The Proceedings Below

On April 15, 1992, respondents filed a complaint in the United States District Court for the District of Columbia seeking declaratory and injunctive relief for petitioners' violations of the McKinney Act. Petitioners moved to dismiss the complaint pursuant to Rule 12(b)(6), Fed. R. Civ. P., on the ground that respondents could not seek relief under 42 U.S.C. § 1983 for such a claim. The district court granted petitioners' motion and dismissed the complaint. Pet. App. 21a-36a.

The court of appeals reversed the district court's judgment and remanded the case for further proceedings. Pet. App. 1a-20a. After reviewing *Wilder v. Virginia Hospital Ass'n*, 110 S. Ct. 2510 (1990), and *Suter v. Artist M.*, 112 S. Ct. 1360 (1992), the majority concluded that the McKinney Act created rights enforceable under Section 1983. The court reasoned that the Act was designed to benefit homeless children, Pet. App. 10a, and "provides specific directions for the plan's execution," *id.* at 11a, through statutory "obligations" set forth in great detail in the text of the Act, *id.* at 12a. See *id.* at 10a-15a.

Judge Sentelle dissented. He noted that "the question is a close one," and he did "not disagree with the majority's summary of [*Suter* and *Wilder*,] only with its conclusion as to the side upon which the McKinney Act falls." Pet. App. 16a.

REASONS FOR DENYING THE WRIT

The decision below is interlocutory; it does not conflict with any decision of this Court or of any other court of appeals; and it is correct. Accordingly, review by this Court is not warranted.

I. THE COURT OF APPEALS' DECISION IS INTERLOCUTORY.

The court of appeals did not affirm a final judgment against petitioners holding them liable under Section 1983 for a violation of the McKinney Act. Instead, the court below held only that respondents can seek relief under Section 1983 for an alleged McKinney Act violation, and remanded the case to the district court for further proceedings. Petitioners are therefore in the same position that they would have occupied if the district court had denied their motion to dismiss and had required petitioners to present a defense on the merits to the allegations in respondents' complaint. Accordingly, this case is presently in an interlocutory posture.

Under these circumstances, review by this Court at this time would be premature. If the court of appeals upholds a final judgment adverse to petitioners, petitioners can then seek review of the claim presented in this petition and any other claim that they then have available to them. Before then, review by this Court is not warranted. See, *e.g.*, *Virginia Military Institute v. United States*, 113 S. Ct. 2431, 2432 (1993) (opinion of Scalia, J.); *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostock R.R.*, 389 U.S. 327, 328 (1967); *Hamilton-Brown Shoe v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); *American Constr. v. Jacksonville, Tampa & Key West Ry.*, 148 U.S. 372, 384 (1893); R. Stern, E. Gressman, & S. Shapiro, *Supreme Court Practice* § 4.18, at 224-226 (6th ed. 1986).

II. THERE IS NO CONFLICT AMONG THE CIRCUITS ON THE QUESTION PRESENTED IN THE PETITION

Petitioners maintain that the D.C. Circuit's decision in this case is inconsistent with decisions from the First, Fifth, Sixth, and Seventh Circuits. None of those decisions, however, involved the McKinney Act; each one examined an entirely different law. See *Horn by Parks v. Madison County Fiscal Court*, 22 F.3d 653 (6th Cir.) (Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5633(a)), cert. denied, 63 U.S.L.W. 3263 (U.S Oct 3, 1994) (No 94-164); *Resident Council of Allen Parkway Village v HUD*, 980 F.2d 1043 (5th Cir.) (Independent Agencies Appropriations Act, 1988, Pub. L. No. 100-202, Tit. IV, § 415, 101 Stat. 1329-213 (Frost-Leland Amendment)), cert. denied, 114 S. Ct. 75 (1993); *Stowell v. Ives*, 976 F.2d 65 (1st Cir. 1992) (Aid to Families with Dependent Children (AFDC) program, 42 U.S.C. §§ 601-615 (1988 & Supp. I 1989)); *Clifton v. Shafer*, 969 F.2d 278 (7th Cir. 1992) (a regulation implementing the AFDC program, 45 C.F.R. § 205.10(a)(6)). In fact, the decision below is the first decision by any federal or state appellate court to address the question whether private parties can seek judicial enforcement of the McKinney Act under Section 1983. Because this Court made clear in *Suter* that each statute must be interpreted according to its own terms, 112 S. Ct. at 1367 n.8, the decisions cited by petitioners do not (and cannot) conflict with the decision below.

Petitioners nonetheless claim that the approach followed by the D.C. Circuit in analyzing the issue of statutory interpretation presented by this case differs from the approach followed by those other courts. Petitioners contend that "[s]ince this Court's decision in *Suter*, the lower federal courts have questioned whether this Court continues to subscribe to the analytical framework of *Wilder*," in part because, in petitioners' view, *Wilder* and

Suter cannot be reconciled. Pet. 24-25. That claim lacks merit.

In each case cited by petitioners, the court of appeals analyzed the Section 1983 question in accordance with the approach that this Court set forth in *Wilder* and *Suter*. See *Horn*, 22 F.3d at 657-58; *Resident Council*, 980 F.2d at 1050-53; *Stowell*, 976 F.2d at 68; *Clifton*, 969 F.2d at 283-85. None of those courts held that *Suter* had overruled *Wilder* or that the two cases conflict. On the contrary, the Fifth Circuit in *Resident Council* expressly declined to decide whether *Suter* had modified the framework articulated in *Wilder*, 980 F.2d at 1052; the Sixth Circuit was silent on the matter, *Horn*, 22 F.3d at 657-58; the Seventh Circuit in *Clifton* noted that this Court in *Suter* distinguished *Wilder*, 969 F.2d at 283-85; and the First Circuit in *Stowell* wrote that that "it is much too early to post epitaphs for *Wilder* and its kin," 976 F.2d at 68. Thus, like the D.C. Circuit in this case, none of the decisions cited by petitioners ruled that *Wilder* and *Suter* are irreconciliable.[2] The cases cited by petitioners thus fail to support their position that the courts of appeals are in disarray about the proper interpretation of those decisions.[3]

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[2] Petitioners further contend that there are intracircuit conflicts within the Sixth and Seventh Circuits regarding the general framework for analyzing Section 1983 claims. Pet. 27. An allegation of an intracircuit conflict, however, is for the court of appeals, not this Court, to resolve. *Wisniewski v. United States*, 353 U.S. 901, 902 (1957).

[3] Furthermore, several other circuit court decisions have found the two cases to be compatible. *See, e.g., Loschiavo v. Dearborn*, 33 F.3d 548, 557 n.2 (6th Cir. 1994) ("Although some believe that . . . *Suter* superseded the well-established framework set forth in *Wilder*, this Court has joined other circuits in concluding that the two opinions may be harmonized."); *Wood v. Tompkins*, 33 F.3d 600, 606 (6th Cir. 1994) (rejecting defendant's argument that *Suter* significantly changed the law and ruling that *Suter* "is entirely consistent with *Wilder*"); *Albiston v. Maine Comm'r of Human Servs.*, 7 F.3d 258, 263 (1st Cir. 1993) (*Suter* "left the

III. THE DECISION BELOW IS CORRECT

In *Wilder v. Virginia Hospital Ass'n*, 110 S. Ct. 2510 (1990), this Court articulated a two-part test for use in determining whether a party may seek relief under 42 U.S.C. § 1983 for the violation of a federal law.[4] First, the provision in question must be intended to benefit the putative plaintiff. *Id.* at 2517. Second, the provision must create a "binding obligation" on the government, rather than "reflect[] merely a 'congressional preference' for a certain kind of conduct," *id.* (quoting *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1, 19 (1981)), and the interest so protected may not be so "vague and amorphous such that it is beyond the competence of the judiciary to enforce," *id.* (internal punctuation omitted; quoting *Golden State Transit v. Los Angeles*, 493 U.S. 103, 106 (1989)). Applying that test, the Court held in *Wilder* that health care providers can sue under Section 1983 to challenge a state's Medicaid reimbursement under the Boren Amendment to the Social Security Act, 42 U.S.C. § 1396a(a)(13)(A) (1982 ed. & Supp. V 1992), because that amendment created "a right, enforceable in a private cause of action pursuant to section 1983, to have the State adopt rates that it finds are reasonable and adequate rates to meet the costs of an efficient and economicial health care provider." 110 S. Ct. at 2525.

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basic *Wilder* framework intact"); *Price v. Akaka*, 3 F.3d 1220 (9th Cir. 1993) (*Suter* does not require overruling prior holdings that the Hawaii Admissions Act creates enforceable rights), cert. denied, 114 S. Ct. 1645 (1994).

[4] Section 1983 provides in part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities, secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Two Terms later, in *Suter v. Artist M.*, 112 S. Ct. 1360 (1992), this Court addressed the question whether private individuals can enforce the Adoption Assistance and Child Welfare Act of 1980 (Adoption Act), 42 U.S.C. §§ 620-28, 670-79a, under Section 1983. The Court ruled that the Adoption Act was not enforceable under Section 1983, for two reasons. Distinguishing *Wilder*, the Court explained that that the Boren Amendment "actually required the States to adopt reasonable and adequate rates" and that the "statute and regulations set forth in some detail the factors to be considered in determining the methods for calculating rates." 112 S. Ct. at 1368 (citing *Wilder*, 110 S. Ct. at 2522 n.17). By contrast, the Court held, the Adoption Act offered no guidance as to how "reasonable efforts" are to be measured; how the states must comply with that directive, the Court concluded, "was within broad limits, left up to the State." *Id.* Also, the Court stated that the Adoption Act contained an alternative enforcement mechanism. *Id.* Accordingly, the Court concluded "that the 'reasonable efforts' language does not unambiguously confer an enforceable right upon the Act's beneficiaries." *Id.* at 1370. In so ruling, the Court in *Suter* neither rejected its earlier holding in *Wilder*, nor created an entirely new framework for analyzing the availability of relief under Section 1983. Rather, *Suter* "counsel[ed] that each statute must be interpreted by its own terms," *id.* at 1367 n.8, and distinguished *Wilder* on its facts, *id.* at 1368.

The court below faithfully applied the teachings of *Wilder* and *Suter*. There is no dispute that respondents, homeless children and youths, are the intended beneficiaries of the educational provisions of the McKinney Act. Pet. App. 10a ("The parties all agree that the McKinney Act was enacted to benefit homeless children. *See* 42 U.S.C. § 11431."). In addition, it is clear that there is no adequate alternative enforcement mechanism that can be invoked to bring parties like petitioners into compliance with the Act's obligations. Pet. App. 13a ("the

McKinney Act contains no statutory mechanism for the administrative enforcement of the beneficiaries' rights"). Accordingly, the only question is whether the McKinney Act imposes on petitioners duties that are sufficiently clear and specific so that they can be enforced under Section 1983. In undertaking that inquiry, the court of appeals carefully analyzed the text of the McKinney Act and found that it more closely resembles the Boren Amendment in *Wilder* than the Adoption Act in *Suter*. See *id.* at 5a-15a. Specifically, the court concluded that "the obligations [the McKinney Act] imposes on participating States are clear," *id.* at 11a, and that the language is "specific" and "mandatory," *id* at 12a. That conclusion is correct, as the text of the McKinney Act reveals.[5] Moreover, the court noted that the statutory provisions of the McKinney Act are not "overly 'vague and amorphous.' " *Id.* at 14a (quoting *Wilder*, 110 S. Ct. at 2517). Based on those conclusions, the court held that "the McKinney Act confers enforceable rights on its beneficiaries and that [respondents] may invoke section 1983 to enforce those rights." *Id.* at 15a. In sum, the D.C. Circuit followed this Court's admonition in *Suter*, 112 S. Ct. at 1367 n.8, that each law must be interpreted according to its own terms.

Petitioners claim that the decision below saddles them with large and unforseeable financial obligations. Pet. 3.

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[5] See, *e.g.*, 42 U.S.C. § 11432(e)(3) ("The local educational agency . . . shall . . . enroll the child . . . [in the school that] is in the child's best interest"); *id.* § 11432(e)(5) ("Each homeless child shall be provided services comparable to services offered to other students in the school"); *id.* § 114532(c)(6) (requiring that records kept by the school "shall be maintained" so as to be available when the child enters a new school district); *id.* § 11432(e)(7) ("Each local educational agency . . . shall coordinate with local social services agencies" to serve homeless children and their families); *id.* § 11432(e)(8) (requiring that the local educational agency "shall designate a homelessness liaison"). See also Pet. App. 12a (noting that paragraph (2) of 42 U.S.C. 11432(e) identifies those specifications as "requirements," rather than as "options").

That is a canard. The decision below only gives respondents the right to seek relief under Section 1983 for violations of whatever obligations petitioners voluntarily assumed by accepting federal funds under the McKinney Act. The D.C. Circuit did not decide what those obligations are, only that respondents are entitled to judicial relief if petitioners have forsaken their statutory responsibilities. In concluding that homeless children in the District may invoke Section 1983 to enforce their rights to a public education, the court of appeals did not impose any new obligations on the District of Columbia. Rather, that court simply eschewed an interpretation of that law that would render it "a dead letter." *Wilder*, 110 S. Ct. at 2520.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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